DOCUMENT RESUME

ED 120 958 EA 008 121

AUTHOR Colton, David L.
TITLE The Influence of an Anti-Strike Injunction.
PUB DATE 21 Apr 76
NOTE 37p.; Paper presented at the Annual Meeting of the American Educational Research Association (San Francisco, California, April 19-23, 1976)

EDRS PRICE MF-$0.83 HC-$2.06 Plus Postage
DESCRIPTORS Board of Education Policy; *Case Studies; Collective Bargaining; *Court Litigation; Elementary Secondary Education; Employer Employee Relationship; *Labor Problems; Models; Political Power; Teacher Associations; *Teacher Strikes
IDENTIFIERS *Missouri (Saint Louis)

ABSTRACT

This study broadens the base of judicial impact studies in education, extends a theoretical model appropriate for such studies, and suggests implications for policy and practice in the area of public sector labor relations, particularly with reference to the use of antistrike injunctions. Focal point for the study is an examination of the 1973 teacher strike in St. Louis, where teachers defied an antistrike injunction for four weeks. In his discussion, the author utilizes the French-Raven social power model to describe the Board of Education's efforts to mobilize judicial power against the teachers, the teacher organization's efforts to neutralize the board's strategy, and the outcomes of these efforts. (Author/JG)

****
* Documents acquired by ERIC include many informal unpublished *
* materials not available from other sources. ERIC makes every effort *
* to obtain the best copy available. Nevertheless, items of marginal *
* reproducibility are often encountered and this affects the quality *
* of the microfiche and hardcopy reproductions ERIC makes available *
* via the ERIC Document Reproduction Service (EDRS). EDRS is not *
* responsible for the quality of the original document. Reproductions *
* supplied by EDRS are the best that can be made from the original. *
****

ED120958

SCOPE OF INTEREST NOTICE
The ERIC Facility has assigned this document for processing to: EA SP
In our judgement, this document is also of interest to the clearinghouses noted to the right. Indexing should reflect their special points of view.

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION
THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY.

PERMISSION TO REPRODUCE THIS COPYRIGHTED MATERIAL HAS BEEN GRANTED BY
David L Colton
TO ERIC AND ORGANIZATIONS OPERATING UNDER AGREEMENTS WITH THE NATIONAL INSTITUTE OF EDUCATION. FURTHER REPRODUCTION OUTSIDE THE ERIC SYSTEM REQUIRES PERMISSION OF THE COPYRIGHT OWNER.

The Influence of an Anti-Strike Injunction

David L. Colton
Washington University
St. Louis

Prepared for Session 14.05, Collective Bargaining for the Schools: Issues of Power and Policy, at the 1976 American Educational Research Association, April 21, San Francisco

EA 008 121

THE INFLUENCE OF AN ANTI-STRIKE INJUNCTION

David L. Colton
Washington University, St. Louis

Since the 1930s collective bargaining has become the principal device for managing the allocation of power between employers and employees in the private sector of the U. S. economy. One of the reasons why collective bargaining works in the private sector is that the bargaining process is constrained by a set of legal groundrules--groundrules which were adopted after a long period of acrimony, debate, trial-and-error, and occasional violence. These rules limit the means and the extent of power utilization by parties in the bargaining process, and the conditions under which power may be utilized.

Among the most important of these legal groundrules are those pertaining to the use of anti-strike injunctions. An anti-strike injunction is a court order requiring workers to remain at their jobs (or return to them); failure to comply with such an order can lead to contempt of court proceedings, jail sentences, and fines. Early in the 19th century employers discovered that anti-strike injunctions could be obtained easily from courts, on the pretext that a strike would do irreparable damage to legally protected rights such as property and free commerce. In the ensuing decades hundreds of anti-strike injunctions were obtained to stop strikes. Very few labor organizations had the will, the skill, or the resources to defy anti-strike injunctions. Deprived of its ultimate weapon, the strike, labor was severely handicapped in its struggles with management. Labor leaders turned to the political process for redress. By 1932 passage of the Norris-LaGuardia Act and similar acts in many states had banned the use of anti-strike injunctions in most labor disputes. Today we rarely see anti-strike

---

*This paper was prepared for an A.E.R.A. Symposium, "Collective Bargaining for the Schools: Issues of Power and Policy", San Francisco, April, 1976. Portions of the paper are taken from materials being published by the author, and no portion may be copied or published without the author's express consent.

injunctions used in the private sector of the economy.

The foregoing events can be re-cast in terms of today's symposium themes--"power" and "policy". In these terms, an anti-strike injunction aligns the power of government--particularly its coercive power (by way of contempt proceedings) --on the side of management in labor-management disputes. However the powers of the courts are subject to limitation by the legislature in our system of government. Policy action, such as the Norris-LaGuardia and similar Acts, curtailed the courts' authorization to issue anti-strike injunctions.

But the Norris-LaGuardia Act didn't apply to public employees. Current public policy--statutory and judicial--usually permits school managers to seek injunctive relief in the face of a strike. Given the availability of such relief, school managers tend to seek it, for it enhances their power in disputes with teachers. In the teacher strikes which occurred last September, for example, roughly 40% of the struck school boards sought and received injunctive relief in some form.[1] But, faced with growing political power by teachers and other public employees, legislators in Washington and the state capitols are having to face a difficult question: should the use of anti-strike injunctions now be curtailed in the public sector, particularly if there is to be collective bargaining in that sector?

For a number of reasons, it is very difficult to come to grips with the policy aspects of anti-strike injunctions in the public sector. One reason is that the issue raises broad questions about the role of the courts in our society. Some argue that the issue should be settled in the courts; hence evolving judicial doctrine, and efforts to shape that evolution through test cases, attract a great deal of attention.[2] However others contend that the courts should play a less important role. It is worth noting that in 1930 Felix Frankfurter, then a law professor, argued that the use of anti-strike injunctions undermined the legitimacy of the entire judicial system;[3] his argument helped pave the way for the Norris-LaGuardia Act. I think a similar argument could be made today: the fact is that hundreds of thousands of teachers have defied anti-strike injunctions,

and that fact surely has affected young peoples' emerging conceptions about "law and order".[4] School managers, of course, use this argument to berate injunction-defying teachers. Thus the public policy question can be construed as one which concerns the advisability of court action which invites, or at least cannot prevent, defiance.

A second reason for difficulty in addressing the anti-strike injunction issue in policy terms, of course, is dispute about the desirability of any collective bargaining in the public sector. Personally, I think that is a dead issue: public employees now constitute a formidable bloc of voters and pressure groups, and public sentiment about public sector bargaining is increasingly favorable. However, the "right to strike" issue, which is inextricably interwoven with the larger collective bargaining discussion, remains very volatile. It elicits much rhetoric, and hence tends to divert attention from the more operational question: "can public employee strikes be stopped?" That is what anti-strike injunctions are all about.

A third problem is that thought about anti-strike injunctions is deeply embedded in a "conventional wisdom" which supports inaccurate perceptions. For example, school managers relying on the conventional wisdom tend to favor the use of anti-strike injunctions, for they were, after all, highly potent tools for stopping strikes in the private sector, and presumably should function as well in the public sector. And, in fact, they do work often enough to reinforce the traditional management position.[5] The old image of the teacher also lends support to those who favor use of anti-strike injunctions; teachers, after all, are supposed to be docile, service-oriented, exemplary citizens (i.e. law-abiding folks) whose self-proclaimed image of professionalism will produce compliance in the face of a court order directed against their own illegal activities. Perhaps such images foster board members' predispositions to seek injunctive relief--a proclivity reflected in a recent American School Board Journal poll.[6]

The conventional wisdom also can be summoned to support facile explanations for the occasional failure of injunctive relief to produce the intended results. For example, courts can be blamed for being too weak in imposing fines and jail sentences, or in insisting that penalties be honored. Or the courts may be accused of seeking to foster settlements, rather than forcing a resumption of schooling. Another common explanation for teacher defiance of injunctions is that rivalry between teacher organizations impels them to out-do each other in defying the courts. In addition there is the "outside agitators" argument: were it not for UniServe teams from the NEA, or organizers such as the AFT's Joe Crescella, teachers would obey injunctions. Finally, of course, there is the radical argument, saying that the conditions of teaching have become so oppressive that teachers will go to any length, and support any strategy which offers promise of improvement in conditions, even if that strategy takes them outside the law. I suggest that the conventional wisdom is ample. But it is not adequate to provide a basis for policymaking, for it simply is inaccurate on too many counts. School managers who have relied upon the conventional wisdom have all-too-often discovered, to their dismay, that anti-strike injunctions can backfire. School managers who have sought injunctive relief often reflect the post-mortem sentiments of an Ohio school board member who has written that "I was really surprised that they disobeyed the court order. I didn't think they would do that and the people in the community didn't either."[7]

In the face of all of this, it is hardly surprising that existing legislation displays a wide diversity of approaches to the use of anti-strike injunctions in the public sector, that many legislative efforts to erect legal frameworks for public sector bargaining have foundered on the injunctions issue, and that our courts themselves are increasingly divided on the matter.[8] Now I am aware that a social scientist has reason to be humble in trying to cast light upon such confusion. Nonetheless, today I am reporting a study which hopes to do just that.

I am confident that my fellow panelists and our discussant will comment on the extent to which either the humbleness or the hopes are warranted. I shall begin with a brief recapitulation of a strike which occurred in St. Louis three years ago. An anti-strike injunction figured prominently in that strike. My research was designed to isolate, describe, and analyze the operation of the anti-strike injunction in the St. Louis strike.

I. The 1973 St. Louis Teachers' Strike[9]

Prior to 1972-73 teacher-board relationships in St. Louis usually reflected the low-pressure politics of accomodation typical of Missouri school politics in general. No teacher strikes had occurred. However the system's 4000 teachers were increasingly restless. Frustrations were accumulating from worsening working conditions, from what appeared to many teachers to be the "paternalism" of the Board of Education, and from the state legislature's repeated failure to adopt a law providing for teacher-board bargaining. Moreover, in 1972-73, for the first time, teacher salary schedules in St. Louis had fallen behind those of the metropolitan area as a whole.

There were two major teacher organizations. The St. Louis Teachers Union (SLTU), Local 420 of the AFT, and the rival St. Louis Teachers Association, an NEA affiliate, each claimed 1000-1500 members. Internal dissension and rivalry between the two organizations usually worked to the advantage of the Board of Education. However in the fall of 1972 the two organizations agreed to concert their pressures against the Board. Although they differed in the details of their demands, both groups proclaimed to the Board of Education that there must be a mid-year salary increase and some form of bargaining with the teachers, or else there would be a strike. Both teacher organizations beefed up their internal communications systems. Both groups sought and received advice and assistance from experienced strike organizers employed by the AFT and the NEA. These organizers

diligently stirred up teacher sentiment against the Board. January 28, 1973, appeared to be the most likely date for a strike vote.

The Board of Education employed the several tactics designed to head off the threatened strike. It reminded the teachers that teacher strikes were illegal in Missouri, and that Missouri law prohibited the board from granting either of the teachers' main demands--a mid-year salary increase or a bargaining agreement. However a salary increase was promised for the following school year. Teachers were invited to appear before the Board's "Teacher Concerns Committee" to discuss their complaints and proposals. "Fact sheets" showing the Board's difficult financial position were distributed to teachers, and the Superintendent personally appealed to teachers via the system's radio station not to strike. Meanwhile the Board adopted contingency plans designed to keep the schools open in the event that a strike was called by the teachers. In short, the Board used all the conventional techniques at its disposal--short of yielding to the teachers' demands--to avert the threatened strike. Meanwhile the strike organizers stepped up their efforts to mobilize teacher sentiment on behalf of a strike.

Late on January 17th the Board petitioned the St. Louis Circuit Court for injunctive relief against the strike organizers. Early the next morning the Court obliged the Board by issuing a temporary restraining order prohibiting five teacher organization leaders from "inciting, encouraging, directing, or leading teachers. . . to breach their contracts with the St. Louis Board of Education." Many people felt that the order averted the strike, or at least postponed it. For example the morning paper editorially gave the Board a "public pat on the back for taking this responsible move and averting a threatened shutdown of the public schools." However strike preparations continued, and in fact were accelerated. A strike vote was called for Sunday, the 21st--a week earlier than expected. The teachers voted overwhelmingly to strike. Picketing began before dawn the next day. Roughly

half the teacher stayed away. The Board of Education hastily obtained a second injunction, this one against the striking teachers themselves. Simultaneously contempt citations were filed against strike organizers who had defied the first restraining order. But these new actions had no visible success; on Tuesday more teachers stayed away, and by late afternoon the Board had to announce the shut-down of the city's entire school system. Obviously the court's actions had failed to avert the strike.

In the second week of the strike, following a lengthy hearing in which the teachers' organizations were given an opportunity to argue their case, the initial restraining order against the strike was strengthened by transforming it into a preliminary injunction. The leader of the SLTA promptly announced that the injunction would be defied. Meanwhile contempt charges were being pressed, and early in the third week heavy fines were levied against the SLTA itself, with new amounts added to the fines each succeeding day. More contempt motions were filed, including some against ordinary classroom teachers.

However as the days went by it became increasingly apparent that the School Board's reliance on anti-strike injunction proceedings was not going to get the schools re-opened. Pressures for a settlement grew, and the Board and teachers finally engaged in some de facto bargaining. Finally, four weeks after the strike began, and after the city municipal government coughed up $1,000,000 for security services (which permitted diversion of comparable Board funds into the teachers' fund) a settlement was reached and ratified. However contempt proceedings dragged on for months, and still have not been fully resolved.

II. The Research Problem

My interest in the injunction-defying behavior of the St. Louis teachers was prompted, in part, by the fact that the strike occurred as I was teaching a "Law and Politics of Education" class and I found that (a) our efforts

to understand the actions of the Board, the court, and the teachers were couched in the conventional wisdom, and (b) the conventional wisdom proved to be quite incapable of providing adequate explanation of the events before us, or of anticipating future steps. We knew, for example, that anti-strike injunctions usually do work; in fact one had averted a strike in St. Louis five years earlier. Why was an injunction failing now? Moreover, the nation was in the midst of a "law and order" kick; Nixon and Agnew were inaugurated, following their landslide re-election, just as the strike began. Why wasn't the public upset? "Outside agitators" were present, but the rank-and-file teachers seemed solidly behind the strike. The "rival organizations" hypothesis didn't help us much, for the rival organizations were working in concert. Here then, was a problemmatic situation.

The St. Louis strike also was interesting because it seemed typical of several other strikes in which Board efforts to obtain injunctive relief had the full support of the courts, but yet had little apparent success in forcing teachers to resume work.

Moreover the teachers' reactions to the injunctions fit into a larger research interest of mine: the impact of the courts upon the schools. To date, most impact studies have examined the role of appellate courts (usually the Supreme Court); studies of the impact of a trial court are virtually non-existent. This is unfortunate, for the effects of the trial courts are more immediate. In addition, of course, most cases involving teacher strikes never reach the appellate level, and so our knowledge of the impact of such cases is very slight.

For all of these reasons, then, I launched a case study analysis of the effects of the anti-strike injunction in the St. Louis teachers' strike. My initial research question was simple: "Why didn't the teachers obey, or comply with, the injunction?"

III. Influence Theory

For theoretical guidance in approaching the problem, I employed an influence model developed by French and Raven.[10] Some years ago I used their model of influence to study the responses of local school officials to directives from a state education agency, and I found the model useful in that context.[11] Richard Johnson's study of local response to a Supreme Court Bible-reading case also employed the French-Raven model.[12] If the model could be extended to the anti-strike injunction in St. Louis, additional credence would be gained for the model. I was not wedded to that model, but it did serve to provide an initial set of diagnostic concepts. As it turns out, I had to search no further.

Using the French-Raven approach, the teachers' injunction defying behavior is construed as a failure of influence. The court had insufficient power to influence the teachers toward compliance with its orders. Now I am aware that terms like "power" and "influence" are tricky, but I believe that the French-Raven model provides a useful way of applying them. Their model can be quickly summarized. It views influence as a dyadic phenomenon which must be analyzed in terms of the relationships between two parties. Call one of the parties "O": that's the one trying to control the behavior of the other party, who shall be called "P". In St. Louis the court (and the Board) are "O", and the teachers are "P". Now, according to French and Raven, the capacity of "O" to influence the behavior of "P" is dependent upon "P"s perceptions of "O"s power. French and Raven outline five types of power that "P" could ascribe to "O". The first is reward power, i.e. the capacity of "O" to provide "P" with some benefit such as an increase in salary or status, if "P" complies with "O"s command. The second is coercive power, or "P"s perception that "O" can impose some sanction upon "P" or withdraw some gratification or impose some penalty if "P" fails to comply with "O"s command; dismissals, demerits, or demotions are examples. A third base of power is "legitimate" power, where normative relationships between "P" and "O" impel "P" to comply with

with "O"s wishes. "Obedience to the law" represents such a norm, and it is formerly said that such norms governed relationships between parents and their children, or even between professors and their students. A fourth base of power is "expertise"; here "P" complies with "O"s command because "P" attributes superior knowledge to "O". Finally, there is a referent power, where there is some bond of charisma or personal sentiment which impels "P" to comply with "O"s wishes.

School managers (and classroom teachers, for that matter) regularly employ all of these power bases in order to influence subordinates to comply with organizational policies and directives. Many of them were employed by the Board prior to its decision to seek an anti-strike injunction, in order to influence teachers not to strike. For example, a salary increase was promised for September (reward power). Teachers were warned that a strike might jeopardize their positions (coercive power). They were told that a strike would hurt the children and the community (legitimate power). And they were told that strikes and collective bargaining were illegal in Missouri (expert power).

The utility of an anti-strike injunction from the petitioner's ("O"s) viewpoint, is that it adds new sources of power to those already accessible to the petitioner. In the first place, there is the court's normative power base. Even in this age, compliance with the courts is a powerful norm, and one might think it particularly potent among teachers who profess to teach citizenship. Then there is the court's coercive power. The treat of jail sentences and fines cannot be lightly dismissed by teachers; strike leaders and teacher organizations have been heavily fined for violating anti-strike injunctions. Expert power also is at work in an anti-strike injunction; while teachers may doubt the validity of School Board attorneys' interpretations of the law, a judicial declaration about the nature of the law is more authoritive. In these three areas--legitimate power, coercive power, and expert power--an anti-strike injunction should provide school managers a substantial increment of power which should help influence teachers away from strike activity. That's why anti-strike

injunctions are sought by employers. (The other two power bases cited by French and Raven--reward power and referent power--are not applicable in an anti-strike injunction situation, for the court can dispense no rewards and it has no bonds of personal relationships with teachers.)

IV. Findings

I shall present data bearing upon the use of legitimate power, coercive power, and expert power as they are employed with respect to the St. Louis anti-strike injunctions. Given the French-Raven conception of influence, it will be necessary in each case to show (1) the manner in which the anti-strike injunction was used to evoke "P"s (teachers') perceptions of "O"s (court's) power, and (2) the manner in which "P"s (teachers) evaded compliant responses to "O"s (court's) power base. In the vernacular, I'll be reporting on one-upmanship, as reflected in the injunctive aspects of the St. Louis strike.

Legitimate Power

Legitimate power is the capacity of "O" to invoke norms which will induce "P" to conform to the wishes of "O". Traditionally, teachers have been responsive to a number of such norms. "Professionalism", for example, has been a powerful norm among teachers, and school managers threatened with strikes often invoke the "professionalism" norm in hopes that it might deter teachers from engaging in a "labor" type of activity such as a strike. Another norm invoked by school managers is "the children" who, the managers say, would be the victims of a teachers' strike. Another traditional norm emphasizes the school board's status as the duly elected representative of the local community, and as the public body responsible for operating the schools in conformity with the state law. Still another norm resides in the hierarchical-bureaucratic structure of our schools; the "status" of higher officials sometimes elicits compliant behavior from subordinates, particularly the upwardly mobile ones. Until the last decade or so, such norms served as potent deterrents against strikes by teachers.

Many of these traditional norms--the sources of legitimate power--were invoked by the St. Louis Superintendent in a last-ditch effort to head off the strike. Addressing the teachers via the system's radio, the Superintendent noted that a strike would "affect. . .the future of more than 103,000 children." The Superintendent went on to point out that a mid-year salary increase would require a reduction in programs and personnel, and "such a cut seems irresponsible. . .to students. . . ." Later came a statement about the Board and the teachers being "partners in education." In conclusion, the Superintendent returned to his opening theme, expressing his belief that "all parties. . .have the genuine interest of our students and our programs at heart." Further, "a strike. . . is inimical to the best interests of all segments of our school system and our community."

But the teachers appeared to be unmoved by the Superintendent's appeal to these traditional norms, i.e. these traditional mechanisms for influencing teachers. Strike sentiment continued to build. Thus the Board of Education, using classic anti-strike tactics, requested two injunctions--one against the strike leaders and one against the striking teachers as a class.

The Uses of Legitimate Power

One of the main functions of the court's orders was to broaden and to reinforce the array of norms which might serve to elicit compliant behavior (i.e. refusal to strike) by the teachers. This happened in a variety of ways.

1. New Prestige--

The Board knew, all too well, that its own prestige and credibility were not very high in the eyes of teachers. However the prestige and credibility of the court was something else again, and the Board lost no opportunity to point out to teachers that it was not merely the school managers, but also the courts, which opposed the strike. The court's initial restraining order was posted in every school building. On the second day of the strike, a letter from the Board President and the Superintendent to all teachers noted that "Missouri law prohibits

teachers from striking. The St. Louis Circuit Court has made that clear. . . ." Eight days later another letter to teachers emphasized "the decision of Judge Thomas F. McGuire concerning the illegality of the strike," and quoted extensively from the Judge's order. In much the same manner as other public officials "wrap themselves in the flag," the St. Louis Board sought to brighten its own tarnished image by linking itself to the Court and the Judge.

2. Involving the Public: "Law and Order"

Prior to invoking injunctive relief, the dispute between the St. Louis teachers and the Board attracted little public notice. Teacher-Board acrimony was old news, and St. Louisans are accustomed to labor-management squabbles. However, once the court became involved, a law-and-order norm became operative. Many previously neutral (or silent) outsiders seized upon it as a pretext for calling upon teachers to halt their strike. The city's daily morning newspaper, in particular, sought to invoke the law-and-order norm, as the following excerpts from editorials indicate:

> Teachers. . .have struck against the people of St. Louis and their children--without any authorization under state law.
>
> The militant teachers. . .are flouting state law forbidding such a strike, they are ignoring Circuit Judge T. McGuire's restraining order. . . prohibiting the strike and picketing, and now a faction has resorted to the law of the jungle.
>
> Teachers are not a law unto themselves. They must obey ALL laws and ALL decisions of our courts. To think otherwise would invite anarchy.

In selecting materials for its "Letters" column, the newspaper printed some that also bore upon the law and order norm. One, written by a student, included the following:

> If teachers feel that they have ample reason to disobey the rule of the court cannot we students follow their example and create our own reasons for disobeying their rules? What better authority can be found for our positions, than the example given us by our teachers?

The press was not alone in seizing upon the normative power inherent in the injunction, as a device for urging teachers to return to work. The St. Louis

Bar Association issued a statement saying

> The Bar Association feels it would be regrettable if the teachers of our community were to set the example for their students of defiance of the orders of our courts and our judicial system.

Similarly, the state's just-inaugurated young Governor, eager to avoid being involved in the substantive issues dividing the Board and the teachers, lent his prestige to the courts, urging the teachers to abide by the injunction.

Off in the state capital, where the legislature was in session, the strike provoked an angry response from many legislators--the very people who ultimately would be voting on any collective bargaining law. Several legislators introduced punitive bills which would strip striking teachers of their tenure and pension rights, or which would define a teacher's refusal to report for work as an automatic resignation, or as a basis for dismissal.

3. The Mystique of the Law

Pedaguese and the bureaucratic process are all-too-familiar to teachers, and are unlikely to elicit much deference. But legalese and the judicial process are strange to most teachers, and both the words and the actions of the court and the sheriff may have served to invoke norms of awe and deference. Consider, for example, the language of the temporary injunction, as it was quoted to teachers in a letter sent to all teachers by the Board:

> . . .In short this Injunction restrains leaders of the St. Louis Teachers Union, Local 420, and of the St. Louis Teachers Association, and all members of either of the two organizations, "and all persons acting in concert with them or for or on their behalf" from calling, encouraging, engaging in, or participating in any manner (a) "in any strike or concerted walkout, picketing, withholding of services, work stoppage or slowdown, or interruption of the St. Louis Public Schools."

Representatives of the Sheriff's offices appeared at some picket sites, and officially served pickets with copies of the restraining order. Further, the conduct of the strike seemed to be passing into the hands of lawyers and the court, and all of this might have served to influence teachers to think about returning to work.

Potentially, there was a lot of legitimate power in these norm-invoking activities which resulted from the court's issuance of injunctive relief. However the strike organizers were well-prepared, and immediately launched a counter-offense of their own.

Legitimate Power: The Counter-Offensive

Let me cite two clear examples of the ways in which the legitimate power potential of the court's injunction was minimized or neutralized.

1. Invoking Higher Legal Norms

The injunction, on its face, appealed to norms of duty and obligation. But law also embraces rights, and the teachers and their leaders were quick to point out that rights were involved. Immediately after issuance of the first restraining order, a teacher spokesman said that "(We) will not be squelched from (our) right to communicate with teachers." The concept of "fairness" also was invoked. A flyer distributed to teachers pointed out that the Board president "did not even have her lawyers notify lawyers for the teacher organizations. Thus, we had no chance to present our side of the case to the judge." Such statements must have led teachers to believe that defiance of the injunction was not entirely unwarranted.

Following the conclusion of the hearing and the issuance of a temporary injunction on February 1, the strike leaders seized the opportunity to remind their followers about rightness of their own position, and about the attitude of the Board. A flyer issued immediately after the injunction said, in part,

> Is it right for a court order to be thrown in front of us when we know, truly know, that we are right in this cause?
>
> Is it right for a school board that has been unresponsive, aloof, and unconcerned to be protected by a court of law?
>
> They cannot escape their responsibility by using other public agencies to club teachers into submission.
>
> Fifty years ago it was illegal for <u>any</u> employee to strike. Yet Samuel Gompers and Eugene Debs led frustrated and oppressed workers into

strikes--illegally and in defiance of injunctions. Were they wrong in violating injunctions to improve safety conditions in the mines and steel mills?

2. Setting an Example for the Children

As noted above, the Board of Education, and the press, and others, repeatedly reminded the teachers that their violation of the injunction was setting an example of lawlessness for the children. This was a potent argument, and except for the above-mentioned references to higher law, the teachers had no strong response until the president of one of the teachers organizations, midway through the strike, pleaded guilty to a contempt citation. That action provided the basis for a full-scale effort to neutralize the "example to children" norm used to foster compliance. A teacher spokesman elaborated to the press, thusly:

> "there have been a lot of accusations and allegations that teachers are law breakers. . .and that. . .this is a terrible example for the kids. All right, we stood up in court today and indicated that yeah, we're on strike. We have nothing to hide. We're saying also to the children that when you break the law, if that be the case, you have to face the consequences. . .. We had to face up to our own responsibilities. And we're saying to the kids that when they break the law, they have to face up to the responsibility, and teachers are facing up to that responsibility.

Thus the teacher attempted to place themselves on the side of Thoreau--a place entirely congenial to many young people. (Meanwhile, of course, many teachers were fighting the fines, and others were evading being caught, but the eyes and ears and minds of the rank and file may not notice such actions, confronted with the heroic statements such as those just cited.)

Coercive Power

Coercive power is present when "P"s actions are influenced by his perception that "O" has the capacity and the will to inflict penalties upon "P", or to withdraw certain privileges enjoyed by "P". Teachers were well aware of the Board's coercive power, even in the absence of an anti-strike injunction. For example, one reporter, querying teachers a week before the strike, quoted one teacher in these terms:

> "If we walk out, will we have jobs once the strike is settled? Will we end up next year with a class full of 40 problem children and no

> special help? Will the board call in substitutes to take over our classrooms? A principal or district superintendent or vengeful board can make a teacher's life miserable.

On the eve of the strike vote, the Superintendent issued a thinly veiled threat:

> Teachers are now under contract with the St. Louis Board of Education for the 1972-73 school year. Each teacher should consider carefully and get competent legal advice as to whether his or her failure to report for work as usual may break this contract and thereby jeopardize his or her position and tenure.

However the Board wished to supplement its own bases of coercive power with those associated with an injunction.

The Uses of Coercive Power

When it invoked an anti-strike injunction, the Board not only paved the way for influencing teachers through threats of fines and jail sentences; it also provided a rallying cry for those segments of the public--including taxpayers and parents--who almost instinctively turn to coercive tactics in the face of problems.

1. Contempt proceedings

Board attorneys moved quickly to initiate the coercive aspects of the injunctive process. Contempt motions were filed against strike leaders on the first day of the strike, and as the strike progressed new names were added to the list of those subject to prosecution for contempt. In the interim between issuance of the initial restraining orders (January 17 and January 22) and the hearings scheduled for January 25, Board attorneys took depositions from several strike leaders. It was clear from the questions asked that the Board's attorneys were prepared to prosecute contempt charges and to ensure that any ensuing penalties were in fact paid. For example, the attorneys inquired about the precise activities of the strike leaders in the hours following issuance of the order restraining their activities, and they secured information about the location and amounts of the teachers' organizations' financial assets. In addition the Board hired photographers to take pictures of picketing teachers, and employed detectives to infiltrate rallies and collect evidence about the words and actions of individual

teachers and strike leaders. By and large, these activities were done quite overtly, for the obvious reason that the goal was to elicit enough fear to break the strike: neither fines nor jail sentences would, per se, re-open the schools. When the time eventually arrived, in the judicial proceedings, for the actual assessment of penalties for contempt, Board attorneys recommended enormous fines--fines of such a magnitude as to wreck the teachers' organizations, or which would take years to pay. In short, the Board made it clear that the threat of contempt penalties was not idle; instead it sought to create the impression that it was fully prepared to get the maximum mileage out of any coercive power that might be found in the contempt proceedings.

2. Mobilization of Public Sentiment

Crisis situations, such as a citywide teachers' strike, produce strong reactions, and the Board was not alone in its efforts to mobilize coercive power against the teachers. The morning daily paper repeatedly urged the court to impose the full force of the law upon the teachers, as indicated in the following editorial comments:

> (The teachers) are violating their contracts and state law. If they do not immediately end this walkout and comply with a court restraining order issued against the strike, their pay should be docked for every day they are out.
>
> It is time. . .the Board of Education file a civil suit against the two teacher unions to make them and each striking individual in the organizations pay for all the costs the city has suffered as a result of the strike.
>
> The board should continue to press for fines and jail terms for those who defy the court order. This is the only path that can be taken when reason is thrown out the window and individuals and organizations claim the right to violate the law.
>
> Continued defiance should result in heavy jail terms. If that is not sufficient, leaders should be fired from the system. . . .
>
> Leaders of the SLTU and the SLTA who continue to defy the injunction should not only be heavily fined but jailed until they are purged of contempt.

The press was not alone in its demands that coercive power be used. Although the general public was badly split about the merits of the two parties' cases, there was widespread desire to get the schools to re-open, and groups began to meet and pass resolutions to the effect that police protection be assured wherever schools could be re-opened, while the contempt proceedings continued in court.

Neutralizing Coercive Power

Several tactics were utilized by the strikers to limit the influence of the coercive power which was made available to the Board through the injunction.

1. Outright Defiance

The strike organizers went to great lengths to demonstrate that injunctive coercion would not work. For example, two weeks before the strike (10 days before the Board even sought an injunction) AFT organizer Cascella, at a press conference, announced that "They will go to court, of course, and they'll get an injunction and we will ignore it." On the 18th, upon hearing that the board had requested injunctive relief, a local union official said, "We've made our plans. . . .If it's issued, we'll break it." The threat was not an idle one. In a deposition taken several days after issuance of the order against strike organizers, one of them reported that "To the best of my recollection. . .Mr. Cascella said that he was not going to be restrained by it, and Mr. Bolden (NEA organizer) said, since it was not on him, it did not restrain him, and he was the coordinator." Indeed, the day after the restraining order was issued, organizers and leaders of the teachers' organizations decided to call for an immediate strike vote. On the 22nd, after being named in a contempt citation, Bolden announced that "I'm not afraid to go to jail." Moreover, he said, "Going to court isn't going to stop this thing. It's only going to make the teachers angrier and angrier."

Later, after conclusion of the hearings on the restraining order, and issuance of the temporary injunction, defiance of the court became even more vocal. Moments after announcement of the temporary injunction, the President of the Teachers

Association announced that "it must be the decision of the SLTA to defy this injunction and continue the strike. . . .We will not end the strike until justice prevails. . . .I and the Association leaders are willing to go to jail if necessary, and, hopefully, we will be able to absorb a fine. . . ." The following day more than 1000 pickets marched around the downtown Board of Education headquarters, indicating their defiance of the court's order. Several days later the defiance was still evident; Bolden said that the strike "will continue until we reach an equitable agreement, no matter how much the fine is." (These statements later provided grist for Board contempt citations against Bolden, who shortly thereafter "went underground".)

2. Delay and Evasion

If the coercive power inherent in an injunction is to have any effect, petitioners must be prepared to press contempt proceedings against violators of the injunction. But this is no easy task; it requires, among other things, presentation of evidence that persons charged with contempt were knowingly violating the court's order. It requires presentation of evidence that a violation in fact occurred. It requires that those charged be notified of the charges and brought to court. The burden of meeting these requirements falls largely upon the petitioner (Board of Education) and the Sheriff. The St. Louis strike provided evidence of a large array of devices by which teachers can evade or delay the enforcement of contempt proceedings in an anti-strike injunction case.

The simplest device is simply to disappear, making it difficult or impossible for the Sheriff to serve notices. This happened repeatedly in St. Louis. For example, immediately following issuance of the first restraining order on January 18, strike leaders simply crossed over to the Illinois side of the river, beyond the reach of the Sheriff, and there they finalized their strike plans. In the last two weeks of the strike, when the Board was vigorously seeking contempt convictions, legal proceedings were repeatedly delayed because of the Sheriff's

inability to find the strike leaders. At times the process attained an almost comic quality. Strike leaders sought by the Sheriff would suddenly surface at a teacher's rally, surrounded by a cordon of protectors who would hustle the leader out of sight after a few moments of heroics and inspirational comments. Eventually, almost in desperation, the Board resorted to filing contempt charges against individual teachers--a move hardly likely to improve the Board's image among the teachers.

Delays also resulted from the de facto negotiations process which eventually led to settlement of the strike. These negotiations had to be conducted, in some cases, where the Sheriff could have issued summons ; but in the interest of fostering the negotiations, summons were not issued in such circumstances.

3. Good v. Evil

The contempt convictions and fines against the St. Louis Teachers Association and its President, Jerry Abernathy, had the effect of solidifying teacher sentiment in favor of the strike. A reporter present at a teacher rally immediately following the court's imposition of a fine on SLTA President Abernathy reported that

> cheers, applause, and obvious affection greeted Jerry B. Abernathy when he walked into the large meeting room. . . .Today's action in court seemed to solidify the Association's determination in its strike. . . .The mood was comparable to one that might have been expected if the striking teachers had won a victory instead of what could be interpreted as a set-back. Most of the teachers interviewed indicated they felt as though they were part of a conflict in which good and evil were involved. They felt that they were on the right side.

Strike organizer Bolden, speaking to the assembled teachers about the fine, said "of course we can't afford it. But we have. . .a movement. . . .It is not going to stop. The teachers are going to get their just due." The strikers' mimeograph machines carried the message out to the pickets. "On the Line", a bulletin distributed daily to picketing teachers, carried these messages about the fines:

> The School Board is demanding heavy fines, and, as a further example of the Board's increasingly vindictive attitude, the Board demand stipulates that SLTA not be permitted to pay Abernathy's fines. It

> seems that the Board is determined to cause the personal financial ruin of Jerry Abernathy. We won't let that happen.
>
> The vindictive Board of Education has taken steps to garnish all SLTA funds--but that has not crippled us.
>
> They got our funds, but they haven't broken our strike operations. Despite the fact that SLTA's accounts have been frozen by the courts, we have not been stopped. . . .It is impossible for the courts to stop our movement.

4. Rallying Public Support for the Teachers

If the imposition of fines brought forth "that'll teach 'em" responses from some segments of the public and the media, it also brought forth a strong sympathetic response. Teachers, capitalizing on the fine levied against their martyred leader, Abernathy, launched a "Jerry Abernathy $350-A-Day Fund" campaign. Teacher soliciters appeared in public places to collect donations, explain their position, and to hand out a flyer saying "We believe it unfair for the courts and the board to attack the personal and financial life of a citizen acting with courage to plead the cause of 4200 teachers", and adding that "repressive court actions will not end the strike." Soon "On the Line" was reporting to teachers that "donations have been coming in from citizens as well as fellow teachers and teacher associations in Missouri and other states."

The imposition of fines aroused other less tangible support, but support of great value. From Washington, city Congressman William Clay described the fines as "unconscionable, ridiculous, and absurd." The city Licencse Collector--a powerful figure in St. Louis politics--urged the teachers to "stay in there until the victory is won."

5. Creating the Impression of Futility

An important part of the strike leaders' efforts were directed toward creating the impression, among both their followers and the public at large, that no amount of coercion could stop the strike, and that in fact coercion was counterproductive. The strike leaders subject to contempt proceedings repeatedly told reporters and

teacher gatherings that it was not the leaders who were making the strike, it was the rank and file teachers, and that jailing the leaders would not stop the rank and file in their "movement". The first echelon of strike leaders announced, moreover, that back-up teams of strike leaders were trained and ready to take over in case the first echelon leaders were jailed. The style was nicely illustrated in an extensive press interview immediately following imposition of the fines on February 5. Said NEA organizer Bolden

> The city schools are closed by a crusade of principles which we cannot relent. This strike is just. It is right. And our consciences remain clear. There is just no other way to force a malicious and irresponsible school board to face up to its responsibilities. The Association will pay fines, but because we are an organization of dedicated people, not just funds and objects, they cannot fine us or stop a movement. These methods contribute nothing to resolving the problem. . . .This movement. . . can only be silenced by the Board of Education stepping in and sitting down with us in good faith and negotiating an equitable agreement.

In another statement, Bolden pointed out that the board

> could have used all that money they paid those attorneys. . .and give the teachers that money there... . .I think it would be interesting for you to check just how much the Board has paid those attorneys. You know they had upwards of five or six attorneys and I'm sure their fees were quite high. They spent long hours trying to legally beat teachers over the head. Now that money could have been used to put in the teacher's salary fund.

Futility was compounded by a certain absurdity. Through a peculiarity in Missouri statutes, court fines go into the teachers funds of local school Boards. Thus, at least at first glance, it appeared that any fines levied against the teachers would ultimately revert to them. Technically, of course, it wouldn't have worked out very well, but such technical analysis tends to escape notice in the midst of a strike. Anyway, there was another absurdity, at least in the minds of the teachers. As SLTA President Abernathy explained it, "the Association is a corporation, and they can declare bankruptcy and dissolve, and a new association could be formed. You know, big business does this all the time. . . .folds up one company and forms a new one." Then, finally, as strike leaders pointed

out on several occasions, large fines had been rescinded or reduced following settlement of strikes in other big cities; perhaps the same thing would happen in St. Louis. The point, of course, is that the fines were given little credibility--the prospect of their being paid was viewed as unlikely.

Expert Power

The third main source of power mobilized by an anti-strike injunction is expert power. This type of power is influential in producing compliance whenever "P" is willing to impute to "O" knowledge or expertise which sufficiently warrants a particular course of action by "P". In contemplating a teacher strike, for example, the teachers ("P") might well have been skeptical about the School Board counsel's claims about what the law permits or does not permit with regard to the matters at issue, and such doubt might predispose a teacher toward striking. However if "O" becomes a judge, "O"s claims about the law may be accorded more credibility, and "P" may then be more willing to comply with "O"s directives.

In St. Louis the School Board and its attorneys had long maintained that strikes were illegal in Missouri, that the Board was legally prohibited from bargaining, and that mid-year salary increases were illegal. However in the period before the strike, the teachers were receiving contrary opinions from other sources. For example, the SLTA had been advised by its attorney that Missouri statutes <u>did</u> authorize mid-year salary increases. Moreover teachers knew that other districts in the state engaged in some form of informal negotiations with their teachers. Then, of course, there was the national scene, where teacher strikes and collective bargaining were increasingly familiar. Thus, in the period prior to the strike, the expertise which the teachers imputed to the Board's attorneys must have been considerably diluted by the teachers' other sources of information about their legal rights and duties. In this confused context, a clear declaration of the law by a court might be expected to influence teachers' decisions to join the strike.

Mobilization of Expert Power on Behalf of the Board

One of the beauties of an injunction, from management's (plaintiff's) perspective, is that the court can issue a temporary restraining order before it has heard the defendent's views of the legal matters at issue. In its petition for an injunction, the St. Louis Board's attorneys argued that (1) Missouri statutes, as well as earlier judicial decisions, prohibited teacher strikes, (2) Missouri statutes prohibited collective bargaining by school boards, and (3) a strike would violate the teachers' contracts with the Board of Education. "Exhibits" purporting to show the imminence of a strike were appended, and the Board's attorneys even provided the court with a copy of a restraining order issued some months earlier by another Circuit Court in Missouri. Evidently Judge McGuire found the petition persuasive, for he quickly granted temporary restraining orders against the strike. As was noted above, these orders were quickly brought to the attention of teachers. For example, in the letter sent to teachers on January 23, the Board President and Superintendent pointed out that

> . . .There should be no misunderstanding about strike action itself. Missouri law prohibits teachers from striking. The St. Louis Circuit Court has made that clear by prohibiting teacher picketing. Any teacher who stays out is breaking the law. . . .

Subsequently, after the conclusion of hearings in which the defendents were given the opportunity to show cause why the temporary restraining order should not be converted to a temporary injunction, the court again declared that teacher strikes and collective bargaining were illegal in Missouri.

At first glance then, the injunction should have served to influence teachers to accept the Board's interpretation of Missouri law, and, insofar as such acceptance affected teachers' decisions to strike or not strike, the injunction should have aided the Board's cause. However the strike leaders had a counterstrategy designed to minimize teachers' perceptions of the court's expertise.

Minimizing the Impact of Expert Power

In order to understand the tactics used by the teachers, it is important to remember that a temporary restraining order is unusual in that it precedes the more common judicial adversary proceeding in which both sides present their views of the law before the court issues its decision. Hence, when temporary restraining orders are issued, hearings are scheduled for a few days later; at the hearing defendents are given an opportunity to present their case before the judge decides whether to convert the temporary restraining order into a temporary injunction. These legal proceedings provide occasions for minimizing the impact of the expert power inherent in an injunction.

1. Appeals

The first few days of a strike are all-important to its success. The teachers' main task is to get the schools closed. Partly in order to minimize the influence of the initial court action, and thus to convince teachers that they hadn't yet heard the final version of the law, a number of steps were taken. On January 19th a motion to quash the temporary restraining order was submitted to Judge McGuire; he denied the motion. Immediately thereafter a petition for reversal of Judge McGuire's action was submitted to a appeals panel; it too was denied. On the second and third days of the strike teacher attorneys filed additional motions arguing that the restraining orders were overbroad, that they violated constitutionally protected rights, and that they failed to demonstrate irreparable damage (a normal precondition for issuance of an injunction). None of the motions was successful, but they all served to create the impression, at least among teachers, that Judge McGuire might, somehow, be over-ruled. The General Counsel of the N.E.A. appeared in town on the second day of the strike, advising with teacher attorneys, and announcing that legal proceedings against the teachers would be fought at every step. Ironically, just two weeks before the strike, the Missouri Appeals Court had overturned an earlier Circuit Court ruling favoring the Board in a teacher

dismissal case, and so the teachers had reason to hope that their legal stance might ultimately prevail.

In the aftermath of the strike, much the same strategy was followed. Motions were filed asking for jury trials of those cited for contempt. Motions for reduction of fines were filed. Delays and postponement were granted for several months; indeed 2½ years after the strike a final settlement had not been reached.

2. Using the Hearing to Make Their Case

The teachers' day in court began on the fourth day of the strike, and the teachers' attorneys launched a multi-pronged attack upon the Board's legal position. In its petition for an injunction, one of the Board's arguments had been that striking teachers would be in violation of their contracts. Teacher attorneys brought out testimony that just two years earlier, when the Board had been taken to court to defend its mid-year dismissals of three teachers, the Board had then argued (successfully) that teachers were not under contract. Teacher's attorneys also noted that the Board had not sought to enforce the contracts of teachers who resigned at mid-year--an action which the Board President herself had taken years earlier when she was a teacher. A second point pushed by the teachers' attorneys was whether the Board had acted properly in deciding to seek an injunction, i.e. whether notice of the special Board meeting of January 17th had been properly given, and whether proper records of the meeting existed. The issue was barely germane, but it reinforced long-standing suspicions that Board business was not always conducted openly. A third line of attack probed the Board's contention that a mid-year salary increase would be illegal; a reading of the Board's records from a decade earlier indicated that such an increase had been granted at that time. As for the argument that bargaining would be illegal in Missouri, one of the teachers' witnesses brought out that a number of school districts in Missouri had entered into some form of direct negotiations with teacher organizations.

In the end, of course, these responses to the Board's petition did not prevail. But the responses were prominently reported in the media, and those who sought reasons to doubt the court's interpretation of the law were well-armed. Moreover, by making their argument during the hearing, the teachers' attorneys bought time, and with it the possibility that the Board would yield to growing public sentiment that it sit down and talk directly with the teachers--the teachers' main goal in the strike.

Summary of Findings

The initial question posed in this study was "why didn't the teachers in St. Louis comply with the court's anti-strike injunction?" We examined the four-week St. Louis teacher strike in terms of the French-Raven model of influence. That model suggests that "O"s capacity to influence "P" depends upon "P"s perceptions of "O"s power bases. On January 17, following a series of efforts by the Board (O) to use its regular sources of reward power, coercive power, legitimate power, and referent power bases to influence teachers (P) not to strike, the Board broadened its power base by securing an anti-strike injunction; the Board's expectation was that the addition of the court's legitimate, coercive, and expert power bases to the power bases of the Board would increase the liklihood of influencing the teachers not to strike. However as we scrutinized the actions of the court, the Board, and the teachers after January 17, we found that the teachers engaged in a series of tactics which had the effect of neutralizing the Board's efforts to broaden its power bases through the use of the anti-strike injunction. The accompanying figure summarizes our analysis. In brief, we found that the Board, by itself, had insufficient power to influence the teachers not to strike, and that the addition of the court's power to the Board's also failed to influence the teachers' willingness to strike. Indeed, it is possible that the anti-strike injunction intensified and prolonged the strike.

Figure I Summary of Findings

Type of Power	Power Mobilization	Power Neutralization
Legitimate Power--the capacity to invoke norms which foster Ps compliance with Os directives	Teachers are told by the Board (O) that their strike action defies not merely the Board of Education, but also the Court and government itself. Third parties invoke the "law and order" norm, just as Nixon-Agnew are being inaugurated following their landslide re-election on a "law and order" platform. The "setting a bad example for the children" charge is levelled against teachers for non-compliance. The mystique of the law and the legal process are emphasized.	Teacher spokesmen direct attention toward rights and away from responsibilities. After penalties are assessed, the "example to children" argument is turned to favor the teachers, a la Thoreau. Attorneys are employed to manage the legal proceedings on behalf of the teachers.
Coercive Power--the capacity to evoke Ps compliance with Os directives by invoking sanctions which P perceives as real	Contempt of court proceedings are initiated and prosecuted vigorously. Third parties try to mobilize public sentiment in favor of harsh repression against defiant teachers. Name-calling: teachers' collective reputation as "professionals" and "good citizens" is maligned.	Strike leaders make heroic statements about their willingness to go to jail. Contempt proceedings are slowed through use o delay and evasion tactics. Stress the futility and absurdity of punitive measures. Elicit public support and sympathy, plus support from public officials, by stressing oppression of teachers, and their votes.
Expert Power--the capacity to evoke Ps compliance through Ps deference to Os superior knowledge	Emphasize that the court issued a legal opinion which confirmed that of the School Board's attorneys.	Enter appeals and counter-motions, and stress successful appeals or rulings in other settin Draw attention to any weaknesses in the legal position of the Board of Education.

One of the principle objectives of our study of the St. Louis strike was to find some model for understanding the dynamics of an anti-strike injunction. As I noted earlier, there is a conventional wisdom which is applied to such matters, but it seemed to us to be poorly grounded, and frequently misleading. We now believe that the French-Raven influence model gives us a simpler basis both for explaining and for predicting events in other situations where anti-strike injunctions are invoked.

Discussion

The St. Louis School Board's experience with an anti-strike injunction was not unique. Currently we are gathering case reports of other strikes, and we are finding frequent occurences of a similar pattern: a Board secures an anti-strike injunction and it is defied by teachers. However I must emphasize that many anti-strike injunctions do work, i.e. they do result in a return to work by teachers. The fact that anti-strike injunctions sometimes work as intended, and sometimes do not, poses some difficult problems for both policy-makers and practitioners.

Policy Considerations

Some people are still debating the question of whether there should be collective bargaining in education. To me, the events of the past decade suggest that it is fruitless to spend much time on that question; there is collective bargaining for teachers, and it is likely to become more widespread. Thus it is time to direct our attention to issues concerning the legal groundrules under which such bargaining will be conducted. One of the groundrule issues concerns the use of strikes and anti-strike injunctions. At this moment, our legislatures and our courts are displaying widely divergent approaches to this issue. Let me suggest some policy implications which can be drawn from our study.

The "right to strike", as a matter of principle, can be debated endlessly, and it is. The debate is important, for it helps form opinion on an important matter.

But opinion is not policy. As a matter of policy--and law--teachers presently do not have the right to strike in most states, and most teacher strikes are illegal. Yet during the past decade there have been 100-200 strikes each year. From the viewpoint of policymakers there is an agonizing dilemna here: what do you do when people exercise rights that they don't have, or are in fact prohibited from exercising? The reflexive answer is to be punitive--throw the S.O.B.s in jail, or revoke their licenses, or fine them, or dissolve their organizations. We saw a good deal of that type of reaction in St. Louis. But teachers are voters, and they are increasingly active politically, and hence few legislatures are willing to formally adopt punitive measures. Some legislatures have learned, to their dismay, that strictly punitive measures don't work anyway, as witnessed by the now-extinct Condon-Wadlin Act in New York State. Hence there has been some tendency by legislatures to "punt", i.e. to leave it to the courts, through the use of anti-strike injunctions, to deal with illegal teacher strikes. Such is the situation in Missouri. The trouble with "punting" of course, is that the teachers don't like it, and that is why they are carrying their case to the United States Congress.

But that is not my point. My point is that the right-to-strike issue should not be addressed solely in terms of anti-strike injunctions. Often it <u>is</u> addressed that way though. Legislatures give Boards no other legal recourse. That is dangerous and unwise public policy. I believe that the United States, as a political system, can ill afford the type of defiance elicited by anti-strike injunctions in St. Louis or anywhere else. Our judicial system is too fragile, and too important, to be abused in this manner.

The answer, it seems to me, lies in the creation of public policies which reduce to an absolute minimum the <u>need</u> for anti-strike injunctive relief. The refusal of school boards to engage in bargaining is a frequent cause of strikes (as in St. Louis) and results in resort to injunctions. That's bad. I have become convinced that collective bargaining must be permitted. Where such bargaining

is permitted, there needs to be an array of procedures and agencies for dealing with impasses, for where such procedures and agencies exist, there is (a) an increased possibility for settlement, and (b) a reason for courts to refuse to issue anti-strike injunctions. (Most courts will refuse to grant injunctive relief if any other form of legal recourse is available, or if available forms of recourse have not been used.) In addition, I recommend the restriction of circumstances under which injunctive relief can be granted; already some courts are requiring a genuine showing of danger to the public health or safety before injunctive relief can be granted in the face of a strike. A few courts have refused to issue anti-strike injunctions in the absence of such a showing. All of these steps, I believe, are rooted in an acknowlegement that the anti-strike injunction is a tool of limited efficacy, and that it ought to be a tool of last resort, rather that the first or only line of defense for Boards confronted with strikes.

Having said that, I must take issue with those who urge a complete ban on anti-strike injunctions in education. Boards are terribly vulnerable in the face of organized teachers, and the fact that teachers are organized doesn't necessarily make them any wiser as pedagogues or policymakers. (Perhaps, in fact, it works the other way.) There are some teacher strikes which are so completely unjustified, or so poorly organized, or so genuinely dangerous to the public safety, that they must be halted. Sometimes an anti-strike injunction will do the trick. Thus I think our policies must ensure that the anti-strike tool is available. The problem is to provide local school managers with the knowledge which will permit them to use the tool wisely. Such knowledge depends upon local circumstances, and on case-by-case analysis. And that brings me to some practical considerations.

Practical Considerations

Legally, the St. Louis Board of Education "won" when it sought judicial relief in the face of an illegal teacher strike. The court accepted the Board's argument

that injunctive relief was warranted, and the court followed through on contempt proceedings, levying heavy fines. Unfortunately, while the Board was investing its resources in winning the legal battle, the teachers were drawing strength from that battle, and they ultimately showed that their "loss" in court was merely a sideshow: The main battle was with the Board, not the law, and in the end the teachers got--along with their fines--both a mid-year salary increase and a form of bargaining agreement.

How do we persuade school boards and school managers that an anti-strike injunction is sometimes an exercise in futility, and perhaps even counterproductive? The task is severe. A recent informal poll by the American School Board Journal showed that more than one-half of its respondents would resort to injunctive remedies if faced with a strike. Our Washington University survey, now nearing completion, finds that 30-40% of school boards in fact do utilize injunctive relief. As I examine the literature and the experience of those involved in teacher strikes, I have come to conclude that there are two conditions which cause school board members to seek injunctive relief in the face of teacher strikes: (1) The first condition is unfortunate. It involves a complex mix of anger, lack of alternate remedies, and sheer ignorance of the ways in which anti-strike injunctions can backfire. Here both research and policy may be helpful, for this set of conditions can be restricted. (2) The second condition is defensible. The fact is that a politically astute and knowledgeable school manager knows that under some conditions an anti-strike injunction is workable and justifiable. The trick is to be quite clear about the nature of those conditions. Here again, I think that research can help. At this point, we have only the dimmest understanding of these conditions. One involves the community context, including the socio-economic status of the community. Another involves the status and reputation of the school board, and of the teachers themselves, in the community. A third involves the larger political

context, and particularly the posture of other public employee organizations and labor organizations. A fourth involves tactical considerations: good timing, good publicity, good prosecution and good use of third parties can help make an injunction work.

In the end, an anti-strike injunction is simply a tool. Like all other tools, its utility depends upon the nature of the problem at hand, and the skill with which it is utilized. An inappropriate tool, like an improperly utilized tool, can do more harm than good. So it was in St. Louis. And I believe it has been so in many other cities.

Injunctions involve power. Power must be constrained by policy and by policy-makers. At the state level, we need policies which provide clear guidance and assistance to those local policy-makers who manage the schools--both teachers and boards. Those policy-makers, in turn, must be infused with the knowledge about how to use policy tools, such as anti-strike injunctions, which involve power. Such knowledge may grow out of examinations of events such as those which occured in St. Louis three years ago.

Notes

[1]It is difficult to ascertain the incidence or the effects of anti-strike injunctions in teacher strikes. The 40% figure is based on a survey of the 104 districts (Bureau of National Affairs tally) which were struck during the period August 15 through September 15, 1975. For details of this survey, contact David L. Colton, Director, Center for Educational Field Studies, Box 1183, Washington University, St. Louis, MO 63130

[2]For example, see Jerome T. Barrett and Ira B. Lobel, "Public Sector Strikes--Legislative and Court Treatment", Monthly Labor Review, September 1974, pp. 19-22.

[3]Felix Frankfurter and Nathan Greene, The Labor Injunction (New York: MacMillan, 1930).

[4]With the emergence of "law-focussed education" as a new curriculum movement, the examples which teachers set in matters such as bargaining and strikes may be far more potent as lessons than any formal curriculum materials.

[5]For example, one of the first and most significant modern teacher strikes occurred in New York on April 11, 1962. The strike was halted immediately upon issuance of an anti-strike injunction.

[6]"Get Tough with Striking Teachers, Say Readers", The American School Board Journal January, 1976, p. 46.

[7]Robert G. Stabile, Anatomy of Two Teacher Strikes (Cleveland, Ohio: EduPress, 1974) p. 59.

[8]See Barrett and Lobel, op. cit.

[9]The events reported in this and succeeding sections have not been footnoted in conventional scholarly fashion in this symposium paper--an omission that will be rectified in forthcoming published accounts. In general, my sources of information were (a) the two major daily city newspapers which gave extensive coverage to the strike, (b) the court files, including witnesses' depositions, involving the two injunctions sought during the strike, (c) a group of taped "oral history" interviews, plus a file of in-house materials issued by the two teachers' organizations during the strike (both the interviews and the file were compiled by Irene Cortinovis, Archivist at the University of Missouri in St. Louis), and (d) informal interviews conducted with participants in the strike.

[10]John R. P. French and Bertram Raven, "The Bases of Social Power", Studies in Social Power, ed. by Dorwin Cartwright (Ann Arbor: Institute for Social Research, The University of Michigan, 1959), pp. 150-167.

[11]David L. Colton, "State Power and Local Decisionmaking in Education: A Case Study", Strengthening State Departments of Education, ed. by Roald F. Campbell et al., (Chicago: Midwest Administration Center, University of Chicago, 1967) pp. 41-60.

[12]Richard M. Johnson, The Dynamics of Compliance (Evanston; Northwestern University Press, 1967).